Neutral Citation No: [2020] NIQB 41 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **MAG11042** *Delivered:* **23/03/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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2013 No. 49068

BETWEEN:

ARTHUR MOONEY

Plaintiff/Appellant;

-and-

DECLAN RODGERS P/A DECLAN RODGERS AND COMPANY SOLICITORS

Defendant/Respondent.

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MAGUIRE J

Introduction

[1] In this case the plaintiff/appellant is a Mr Arthur Mooney and the defendant/respondent is Declan Rodgers p/a Declan Rodgers and Co solicitors.

[2] What is before the court are two appeals against decisions of Master Bell made on 7 December 2017. In respect of the first, the Master set aside service of a writ dated 13 March 2014 by consent under Order 12 Rule 8. In the second, he refused an application under Order 6 Rule 7 to extend time for service of a writ of 9 May 2013 to 23 July 2014. Mr Lyttle QC appears on behalf of the appellant and Mr MacMahon BL appeared on behalf of the respondent. The court is grateful to both of them for their well-focussed submissions.

The Factual Background

[3] The factual background can be conveniently set out in bullet point form as follows:

- The underlying dispute between the parties relates to an alleged business transaction going back to 2007. In essence, it is alleged to have involved the defendant receiving a sum of money (£100,000) from the plaintiff for the

purpose of the said sum being invested on 31 May 2007 in a company called Liberty Investment Plc.

- On 9 May 2013 the plaintiff took out a writ in relation to this transaction. The writ was directed at "Declan Rodgers p/a Declan Rodgers and Company solicitors of 463-469 Lisburn Road, Belfast BT9 7EZ". The writ sought repayment from the defendant of the sum of £100,000 or alternatively damages, with interest and costs.

- The writ had the usual one year period of validity.

- The writ initially was held back and was not served.

- However, the plaintiff claims that his solicitors purported to serve the writ under cover of a letter dated 13 March 2014 addressed to the defendant at 463-469 Lisburn Road, Belfast. The service which the plaintiff purportedly effected of the writ was by first class post, the letter and the writ being allegedly posted on 13 March 2014. Service in this way is not unusual and there is no dispute that, if legally effective, the writ would have been served at a point where it would have been within the period of validity, which did not expire until 8 May 2014.

- On the same date - 13 March 2014 - the plaintiff sent (again by post) a copy of the writ (together with a covering letter) to Marsh Claims Consulting, who were claims handlers for the defendant's professional indemnity insurers, who on 21 March 2014 instructed a firm of solicitors to act for it (McCloskeys).

- McCloskeys became active in the case on 27 March 2014. On that day they wrote to the defendant and to the plaintiff's solicitors. The defendant was provided with a copy of the 13 March letter to Marsh Claims Consulting and a copy of the writ. The defendant was asked to confirm whether or not the writ had been served on him and if it had what the date of service was. He was told that McCloskeys would not enter an appearance to the writ until it had received confirmation from him that the writ had been validly served. As regards McCloskeys contact with the plaintiff, it asked the plaintiff's solicitors to provide details to them of service of the writ on Mr Rodgers.

- A reply was received by McCloskeys from the plaintiff's solicitors on 2 April 2014. It stated that service of the writ had been on Declan Rodgers by first class post at the last known address they had for Mr Rodgers. The solicitor at that time acting for McCloskeys has averred in respect of the receipt of this letter that "I noted that the plaintiff's solicitors had addressed their letter to the defendant (viz the letter of 13 March 2014) at 463-469 Lisburn Road, Belfast" whereas "the address that I had in corresponding to the defendant was 420-422 Lisburn Road, Belfast, as this was the address I understood the defendant was practising from". The solicitor drew this to the plaintiff's

solicitor's attention by a letter dated 10 April 2014. This letter recorded what is stated above and ended by saying that "we have written to our client again today with regard to the service of proceedings. We would ask you to bear with us for a short time longer".

- As far as the contact between McCloskeys and the defendant was concerned, the defendant, in respect of the letter sent to him by McCloskeys of 27 March 2014, supra, has averred that he received it and its enclosures, including a copy of the writ, but that "it appears that I did not answer that correspondence". The defendant acknowledges that this led to McCloskeys sending him a further letter of 10 April 2014. That letter had again asked the defendant to confirm whether or not proceedings had been served on him and had enclosed again the earlier correspondence between the parties of 27 March 2014 and a copy of the plaintiff's solicitor's letter to McCloskeys of 2 April 2014. It also noted that "the time period for entering an appearance to the proceedings has long since passed". Speaking of this letter, the defendant has averred that "I do not know … whether I was aware at that stage that the writ had been served to the wrong address". However, it is clear that on 10 April 2014 the defendant e-mailed McCloskeys stating that "I never received correspondence from McCanns" (the plaintiff's solicitors). Notably the defendant also averred that he did not believe that he made "a specific visit to the Bedeck building (i.e. the address to which the writ was claimed to have been originally sent) to check for the letter before replying", though he goes on to say that "it is highly likely that he had collected mail in the period between 19 March 2014 and 10 April 2014".

- On 15 April 2014 McCloskeys wrote to the plaintiff's solicitors to tell them that the defendant "has instructed us that he has received no correspondence from you". The letter also imparted the information that McCloskeys had also been instructed by the defendant that he (the defendant) had been declared bankrupt on or about 28 February 2014. The letter goes on:

> "You will appreciate that in light of, firstly our client's instructions that proceedings were not served on him and, secondly, that he had been declared bankrupt, it would be inappropriate for us to enter an appearance to the writ of summons".

- The validity of the writ expired on 8 May 2014.

- On 11 July 2014 the Post Office returned to the plaintiff's solicitors unopened its correspondence with the defendant of 13 March 2014 together with the Writ. It was addressed to 463-469 Lisburn Road, Belfast. This fact was not communicated to the defendant's solicitors until shortly before the hearing of December 2017 before the Master.

- On 22 July 2014 the plaintiff's solicitor served the writ of summons on the defendant at his 420-422 Lisburn Road address. It was served by first class post and there is no dispute that it was received but, as already noted, by this date it had expired.

- On 2 September 2014 the defendant's solicitors wrote to the plaintiff's solicitors as follows:

> "We write to reaffirm that our client's instructions are that the writ of summons was not served on him. The validity of the writ has now expired and therefore you will either have to issue a fresh writ of summons or make an application for leave to extend the validity of the writ. If you intend to make an application for an extension of the validity of the writ then please provide us with a copy of the application as we wish to appear at the hearing of the application."

- A reminder, in similar terms, was sent by the defendant's solicitors to the plaintiff's solicitors on 4 January 2016 and later on 5 January 2017.

- On 27 March 2017 the defendant's solicitors initiated proceedings for a declaration that the writ had not been duly served on the defendant. This was probably brought about by the receipt of a Statement of Claim from the plaintiff earlier that month.

- On 24 May 2017 the plaintiff applied to the court for leave to extend time for service of the original writ.

- On 7 December 2017 Master Bell made the orders referred to at the outset of this judgment. This led to the plaintiff appealing the orders made by Master Bell to the High Court.

The relevant legal provisions

(1) Service of the writ

[4] Order 10 Rule 1(2) is the Rule which applies in this case. It states that:

> "(2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served -
>
> (a) By sending a copy of the writ by ordinary first class post to the defendant at his usual or last known address, or

(b) If there is a letterbox for that address, by inserting through the letterbox a copy of the writ enclosed in a sealed envelope addressed to the defendant …

(3) Where a writ is served in accordance with paragraph (2) -

(a) The date of service shall, unless the contrary is shown, be deemed to be the seventh day … after the date on which the copy was sent to or, as the case may be, inserted through the letterbox for the address in question.

(b) Any affidavit proving due service of the writ must contain a statement to the effect that -

(i) In the opinion of the deponent the copy of the writ, if sent to, or, as the case may be, inserted through the letterbox for, the address in question, will have come to the knowledge of the defendant within seven days thereafter; and

(ii) In the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee."

(2) Extension of time under Order 6 Rule 7

[5] Order 6 Rule 7(2) states as follows:

> "(2) Where a writ has been served on a defendant, the court may by order extend the validity of the writ from time to time for such a period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if the application for extension is made to the court before that day or such later day (if any) as the court may allow."

[6] The legal principles governing the court's exercise of discretion are helpfully set out in Mr MacMahon's skeleton argument for this appeal and were not in dispute during the hearing. These are:

"(i) It is the duty of the plaintiff to serve the writ promptly. He should not dally for the period of its validity; if he does so and gets into difficulties as a result he will get scant sympathy.

(ii) Accordingly, there must always be a good reason for the grant of an extension. This is so even if the application is made during the validity of the writ and before the expiry of the limitation period; the later the application is made, the better must be the reason ….

(iii) Whether a reason is good or bad depends on the circumstances of the case and normally the showing of good reason for failing to serve the writ during its original period of validity will be a necessary step to establishing good reason for the grant of an extension ….

(iv) Good reasons include difficulty or impossibility in finding or serving a defendant particularly where he is evading service, or agreement with the defendant to defer service. Bad reasons include: negotiations in the absence of agreement to defer service; difficulty tracing witnesses or obtaining evidence; carelessness; that legal aid is awaited.

(v) …

(vi) The application to renew the writ should be made within the appropriate period of validity, but the court has power to allow extension after expiry as long as the application is received during the "first period of expiry" (i.e. the year following) … This is arguably subject to a wider power to allow later extension according to a number of propositions.

(vii) Where the application for renewal is made after the writ has expired and after expiry of the relevant limitation period the applicant must not only show good reason for the renewal but also must give a satisfactory explanation for failure to apply for renewal before the validity expired.

(viii) Whether or not to extend validity is a matter for the discretion of the court and on exercising that discretion the court is entitled to have regard to the balance of hardship ….

> (ix) The application to extend involves a two stage enquiry. At the first stage the court must be satisfied that the plaintiff is demonstrating good reason for the extension and a satisfactory explanation for failing to serve before its validity expired. Only if it is so satisfied will the court proceed to the second stage by considering the circumstances of the case including the balance of hardship."

The Defendant's Evidence

[7] Mr Declan Rodgers has filed two affidavits in these proceedings. The first was filed on 4 October 2017 whereas the second was filed on 21 December 2018.

[8] In his first affidavit, the defendant explains that he had worked as a sole practitioner in the firm of Rodgers and Co solicitors from in or about 1989. Initially his practice had been based at 137B Upper Lisburn Road, Belfast but in or about 2005 it relocated to 463-469 Lisburn Road, also referred to as the Bedeck Building. It traded there, according to his averment on this point, to "its closure".

[9] The defendant notes that on 13 June 2013 he was restricted from practising on his own account by the Law Society, though the effect of this order was stayed until 16 September 2013 "to permit [him] to tidy up [his] affairs". A further extension was, however, granted and the firm did not close until 31 October 2013. He did not, according to him, vacate his office at the Bedeck Building to the end of 2013.

[10] He avers that in November 2013 he joined PR Legal Limited whose premises were at 420-422 Lisburn Road, Belfast. He worked within this firm until the end of October 2016 and in November 2016 he joined another firm as an assistant solicitor.

[11] It appears that after 31 October 2013, when he says his practice was closed at the Bedeck Building, he did not put into operation any forwarding system for the receipt of mail which arrived at that address. Rather he said that he called at the premises to check on post from time to time on an ad hoc basis.

[12] In his first affidavit (at paragraph 7) he specifically asserts he did not receive the letter or enclosed writ of 13 March 2014.

[13] He did, in contrast, receive the writ of summons sent to him at the premises of PR Legal Limited on 22 July 2014.

[14] The defendant's second affidavit followed an initial hearing before the court. It was filed to provide the court with greater detail, in particular, about how the defendant dealt with the collection of mail from the Bedeck Building after his firm closed.

[15] In this affidavit the defendant explained that his firm had occupied one of four units at the Bedeck Building. There were no external post boxes and the arrangements for the receipt of post involved postal boxes (one for each unit in the building) found inside the front door of the building. His office staff had a key to his box and the postman when he arrived at the building would be buzzed in by one of the occupants of the four units and he/she would either put mail into the appropriate small post box for the unit in question or would, in the case of larger items or if the post box was full, leave the mail concerned on top of the post box unit.

[16] The defendant averred that when his business was operating it was his staff who would have collected the mail from the foyer, but after the business had ceased to operate he, as indicated in his first affidavit, would personally collect mail from time to time. The frequency of his visiting became less over time and coincided with a drop in the volume of mail.

[17] In an important averment he stated that he:

> "Advised existing clients that [he] had moved to PR Legal and asked whether they were content that [he] kept dealing with the matter."

However, he did not send a general letter to all clients. "Rather such communications took place as I worked on the individual files and matters arose that required attention".

[18] As regards the Bedeck Building, he avers that he vacated it completely at the end of 2013.

[19] By March 2014 he averred that he was collecting mail approximately every two weeks. He retained a key to the building but could access it by other means as well. He stated that, on occasions, mail was left on top of the unit even though the box was not full.

The evidence of Colin Price, Royal Mail

[20] There are two affidavits within the appeal bundle from the above person. One is dated 28 May 2019 and the second is also dated as sworn on the same date.

[21] By the date these affidavits were sworn, the envelope containing the plaintiff's solicitor's covering letter and the writ of the summons, dated 13 March 2014, had been returned by post to the plaintiff's solicitors. The envelope was unopened. The precise circumstances of how it came to be returned are not known and the existence of this returned envelope apparently only became known to the defendant shortly before the hearing before Master Bell.

[22] Mr Price's affidavit deals with the procedure within Royal Mail in respect of relevant issues in this appeal.

[23] The following main points emerge from Mr Price's averments:

- The examination of the returned letter reveals that it was franked by the plaintiff's solicitors on 18 March 2014 so that it cannot have been delivered prior to that date as franking is a pre-delivery event.

- There is a standard procedure which post persons are required to follow in the event that it is not possible to place a letter in a post or letterbox. The post person must, in that event, write on the front of the envelope the word "inaccessible" and then state when he/she attempted but was unable to deliver. Thereafter two further attempts to deliver the letter should occur. The attempted delivery date should be recorded on the envelope and if not delivered the envelope should be returned to Tomb Street Post Office.

- Thereafter arrangements would be made to return the letter to the sender within the next working day.

- In this case the letter was not returned to the sender to July 2014.

- The deponent could not from the envelope see why it was returned after a delay of 3½ months or so.

- There was a sticker on the envelope which will have been attached to it at Tomb Street. However, the information which should have been recorded on it - the dates of non-delivery and why it could not on each date be delivered - had not been recorded on it and it had been left blank.

- Mr Price was unable to account for this state of affairs.

- Mr Price was unable to say who the post person who dealt with this item of mail was.

- If the correct procedure had been used in the case of non-delivery, the letter should have been returned to the sender on 22 or 24 March 2014.

- Leaving mail on top of a post box at the addressee's address would not be normal procedure.

Law Society records

[24] According to the Law Society records, the defendant's own firm ceased trading on 24 October 2013. As of 13 March 2014, again according to Law Society

records, the defendant was employed as a solicitor by PR Legal Limited at 420-422 Lisburn Road, Belfast.

[25] In respect of making use of the Law Society's Directory for Solicitors, Orla McDonald, a solicitor in the firm of McCann and McCann, the solicitors acting for the plaintiff in these proceedings, has averred:

> "4. The decision to serve the writ at premises at 463-469 Lisburn Road, Belfast was based on the fact that this was the last known address of the defendant. Upon issuing of the writ, the Law Society directory for solicitors was consulted and the address obtained from this directory. This directory is available to members of the public and requires updating upon the change of circumstances of the firm, including its address. Consultation of the directory combined with the last known address of the defendant was, at the date of serving, 463-469 Lisburn Road, Belfast.
>
> 5. At the time of service, this was the correct address and the defendant has done nothing to notify any person that this was purportedly not the address for service."

Court's assessment

Issue One

Was there good service of the writ on 13 March 2014 or thereafter prior to its expiry?

[26] Clearly this is not a case of personal service and for service to have been effected lawfully the facts would have to fit within either (a) or (b) at paragraph 2 of Order 10 Rule 1.

[27] There is no suggestion that this was a case other than one of postal service, that is a (2)(a) case. The solicitor acting for the plaintiff, it is said, sent the writ by first class post to the defendant "at his usual or last known address". This introduces the question of whether in fact this occurred.

[28] According to the affidavit filed by the said solicitor:

> "The decision to serve the writ at premises at 463-469 Lisburn Road, Belfast was based on the fact that this was the last known address of the defendant. Upon issuing of the writ, the Law Society directory for solicitors

> was consulted and the address obtained from this directory … Consultation of the directory combined with the last known address of the defendant was, at the date of serving, 463-469 Lisburn Road, Belfast."

[29] The court notes from the above that it is maintained that the address in question was believed by the deponent to be the defendant's last known address and, secondly, that there had been, on the solicitor's part, consideration of the Law Society directory. However, this appears to have been at the time of "issuing the writ", which would have been 9 May 2013. At that time, there is no doubt that the Bedeck Building address was the address at which the defendant carried out his business as he did not join PR Legal (according to him) until 1 November 2013.

[30] There is, importantly, no averment from the plaintiff's solicitor indicating that the Law Society directory was re-consulted at the time of purported service of the writ.

[31] On the other hand, there does not appear to be any reason why the solicitor in question should have entertained significant doubt as to whether the address in question had changed but plainly a checking process at the time the writ was being served would have been wise and does not appear to have occurred. It appears that, in the Law Society's eyes, the defendant's firm ceased trading from 24 October 2013 and that he had already joined PR Legal as of 13 March 2014. However, it is unclear whether or not, if an enquiry to the Law Society at the date when the writ was going to be served had been made, this information would have been available to the plaintiff's solicitor as there is no affidavit which explains how such an enquiry would have been handled by the Law Society.

[32] It is clear at this stage that the letter accompanying the writ was posted by the plaintiff's solicitor, though there is some doubt about the date of posting. It is known that the letter was stamped by the Post Office on 18 March 2014 as that appears from the unopened envelope which was returned. The correspondence with the writ is dated 13 March 2014. The letter apparently was returned to the plaintiff's solicitors on 11 July 2014. Where the unopened envelope was between 18 March 2014 and 11 July 2014 is unknown.

[33] The defendant has averred that he did not receive the letter. His position was communicated to McCloskeys on 10 April 2014 and McCloskeys communicated it to the plaintiff's solicitors on 15 April 2014. At this time, the writ had not expired as it was valid for one year after the date of issue. There was still over three weeks before the writ was due to expire.

Deemed Service

[34] On the facts discussed above, this case cannot be viewed as one of "deemed service" as it falls foul of Order 10 Rule 10(3)(b) as the writ has been returned to the plaintiff through the post apparently undelivered to the addressee.

Was there actual service?

[35] The difficulty which faces the court is that it has no evidence that in fact the writ was served by first class post. To overcome this situation, the plaintiff asked the court to draw certain inferences against the defendant. In particular, the plaintiff asked the court to accept that in fact the defendant did receive the writ and is not being truthful when he avers he did not. The court has given careful consideration to this possibility, but finds itself unable to be satisfied that this is what occurred. In the court's eyes, it should be slow to accept such a serious allegation levelled against the defendant and amounting to an act of dishonesty unless there are solid foundations for it. The court does not consider that there are such foundations in this case. Indeed the defendant's subsequent behaviour in specifically claiming that he did not receive the writ at a time when the writ remained valid and could have been re-served without any significant difficulty suggests this scenario is not likely, as the reaction to the defendant's assertion of his position in April 2014 that would have been expected would have been a simple act of re-service by the plaintiff's solicitors.

[36] It is also suggested that the court should find as a fact that there was service of the writ by delivery of it at the foyer at the Bedeck address. The court, it is argued should take this view because there is no evidence that the postal system had not functioned properly on other occasions or that there had been delivery problems before this. While the court accepts that these last observations are factually correct, it does not follow that the court should infer from these that in fact the writ was delivered in this case. It is not unknown for post to go astray within the postal system or for it to be delivered to an incorrect address or for it otherwise to miscarry. It seems to the court that in this area in this case the court, in effect, is being asked to speculate in an unacceptable way. Once the court excludes the possibility that the defendant is simply acting dishonestly in claiming non-service, as it has done, it is left with a void as to what actually occurred. The known facts do not point to any clear answer. All that can confidently be said is that the writ entered the postal system at some stage; was stamped as being within the system on 18 March 2014; but only re-emerged from it in July 2014. Its journey within these parameters is unknown and there are any number of "might have been" permutations.

[37] It has also been suggested that the defendant should be viewed on the facts of this case as having been negligent in failing to pick up his post from the Bedeck Building and that this may explain why, the letter having been delivered to the building, was not picked up. The problem with this scenario is not that this is not possible but is that it is simply speculative.

Issue 2

Should there be an extension of time for the purpose of Order 6 Rule 7 (2)?

[38] There are significant difficulties which face the plaintiff in respect of this issue. In this case the defendant's solicitors told the plaintiff's solicitors on 15 April 2014 that the position of the defendant was that he had not received service of the writ allegedly sent to him at the Bedeck address on 13 March 2014. This put the plaintiff's solicitors on clear notice that a problem with service had arisen. However, the position, from the point of the plaintiff's solicitor, was relatively straightforward as the option of simply serving the writ at the defendant's current address at 420-422 Lisburn Road, Belfast (which the court is satisfied the plaintiff's solicitors had been provided with on 10 April 2014) was open for a period of over three weeks before the validity of the writ would expire. Moreover, the plaintiff's solicitors also had available to them the option at that time before the expiry of the writ of making an application to the court to extend the writ's validity.

[39] For reasons which have not been explained, the plaintiff's solicitor did not resort to the use of either of these options. Instead the writ's validity was allowed to expire. Only after this, on 22 July 2014 was the service of the then expired writ made at the PR Legal Limited address, a step which was plainly legally flawed.

[40] Thereafter, as recounted earlier in this judgment, the further options available to the plaintiff's solicitors were outlined in correspondence sent by the defendant's solicitors on no less than three occasions (2 September 2014; 4 January 2016 and 5 January 2017). The options rehearsed were those of either the issue of a fresh writ or the making of an application to extend the period of the validity of the writ, however, this correspondence did not, it appears, stir the plaintiff's solicitor into action.

[41] The next initiative taken in the case was taken by the defendant's solicitor when he issued proceedings seeking a declaration that the writ had not been served on the defendant. This step was taken on 27 March 2017 and may have been precipitated by the delivery of a statement of claim by the plaintiff earlier that month. This did produce a reaction by the plaintiff's solicitors on 24 May 2017 in the form of the application now being considered by the court (to extend the period of validity of the writ) but this action was being taken over three years after the writ's validity had expired.

[42] Applying the legal tests set out earlier in this judgment, the court must first decide whether the plaintiff has demonstrated a good reason for not serving the writ during its original period of validity.

[43] Unfortunately there has, to the court's mind, been no good reason which has been demonstrated to the court. While the court can accept that the window of time for service of the writ as a valid writ after the position of the defendant became

known was relatively short, it was not so short as to mean that it would not have been reasonable to have expected that it would have been attended to. On this issue the court does not have before it any convincing explanation as to why steps were not taken to avoid the expiry of the writ. While various alleged 'good reasons' were advanced in argument (for example, the defendant's change of address; alleged delay by the defendant in taking proceedings for a declaration that the writ had not been duly served; the defendant's bankruptcy) none of these, in the court's estimation, carries significant weight given the overall circumstances of this case.

[44] In view of the court's conclusion above, it is not strictly necessary for the court to go on to consider whether overall there has been provided to the court a good reason for the extension of time which would be necessary to bridge the period from the expiry of the writ (8 May 2014). For completeness, and in case the court be viewed as wrong to have reached the conclusion it has reached on the first aspect above, the court will indicate that in this context also it is of the view that no good reason for an extension of time, as required, has been demonstrated.

[45] In this regard, it is impossible for the court to ignore the fact that the defendant's solicitor had repeatedly drawn the options available to the plaintiff's solicitor in the period after the writ had expired to the latter's attention. In effect, this correspondence was ignored, notwithstanding that it is obvious that the longer a matter of this sort was left the better must be the explanation to the court which a party seeking an extension must provide.

[46] The court is left with no real explanation as to why events unfolded as they did.

[47] It is unnecessary for the court to consider the issue of the balance of convenience

[48] It is also unnecessary for the court to consider a point raised by the defendant that this was a case of the defendant losing the benefit of an accrued limitation defence.

Conclusion

[49] The court, having treated the appeal as one for it to consider *de novo*, affirms the outcome of the proceedings before the Master and dismisses the appeal.

[50] The plaintiff asked the court, long after the oral hearing, to consider the contents of a recent case, which it was asserted might be of assistance to the court. This is a case called *Denmin Limited v Hughes* [2019] NIQB 28. The defendant indicated that he had no objection to this course. The court records that it has considered the case but does not find there is anything in it which requires mention in this judgment.